Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

MARCH Term, 1995

Azariah Michael Ellington and
Joy Elaine Ellington,

Petitioners

Versus

The Superior Court of
Los Angeles County,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Azariah M. Ellington and
Joy E. Ellington
In Pro Per
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PRESENTED QUESTIONS

I

If the "legislative intent" of the "litigation privilege" is to establish a veil of protection for the public to have free access in a judicial proceeding, what constitutional privilege is provided to dictate the intentional use of known false statements of material facts and issues as a defense?

II

42 USC section 1983 demands that a public official can only claim "absolute privilege" upon the burden of proof that the said acts performed were within his lawful duty. What burden can be placed on the participates of a judicial proceeding to assure protection of the constitutional rights of all parties involved, if aggrieved party has followed all the states laws concerning "attempting to bring all damages within the proceeding", but denied the very privilege of a hearing?

III

Even under section 1983, Due Process, there is a prerequisite of a hearing before termination of an issue, then how can a private party obtain fair constitutional rights of Due Process under the "absolute privilege" without defined guidelines for all litigant parties?

IV

What protection is available to those who suffer damages which arises within the litigation, but such

PRESENTED QUESTION, cont.

IV, cont.

damages are not discovered until the litigation has ended, does not the constitution provide relief for all citizens by the breach of duty (especially intentional breach with reckless disregard for the truth) against others?

V

The core of a fraudulent act is deceit. How can the deceit be deemed privileged, if such deceit is allowed to operate within the very fiber of a judicial proceeding without some form of accountability?

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AZARIAH M. ELLINGTON AND
JOY E. ELLINGTON,

Petitioners

Versus

THE SUPERIOR COURT OF
LOS ANGELES COUNTY

Respondent

PETITION FOR A WRIT OF CERTIORARI

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The Petitioners, Azariah M. Ellington and Joy E. Ellington pray that a Writ of Certiorari issue to review the orders of the California Supreme Court, The California Court of Appeal, the Superior Court of the State of California, Los Angeles County.

OPINIONS BELOW

The Denial of the California Supreme Court, entered December 21, 1994 is recorded and appears at page 1a of the Appendix herein.

The Ruling of the California Court of Appeal, entered October 17, 1994, is recorded and appears at page 2a of the Appendix herein.

Remittitur Notice of the Court of Appeal of the State of California, Second Appellate District, Division 4, dated January 24, 1995 is recorded and appears at page 3a of Appendix herein.

The Ruling of the Los Angeles Superior Court, East District Pomona, entered January 11, 1993 is recorded and appears at **page 4a of the Appendix** herein.

JURISDICTION

The final Order of the California Supreme Court is dated December 21, 1994, and these Petition for Writ of Certiorari is filed timely within 90 days thereof. The jurisdiction of this Honorable Court rests upon U.S.C.A., Constitution, Amendment 1, U.S.C.A, Constitution, Amendment 14, 42 U.S.C.A. § 1983, 28 U.S.C.A § 1257 and Rules of the Supreme Court of the United States, Rule 10.1(c).

CONSTITUTIONAL PROVISIONS INVOLVED

FIRST AMENDMENT AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

CONCERNING THE FIRST AMENDMENT:

All speech is not privileged, particularly speech which derived from a conspiracy to commit a crime or a tort, with the intent to deprive and harm another, with the knowledge that such speech will mislead the Court and deprive another of his or her right to due process and a fair hearing.

Also that such speech is set forth in reckless disregard for the truth and evidences a course of conduct, as such speech and conduct conflict with the core meaning of "freedom of speech", which is the

constitutional right to say what you want as long as you do not interfere with others' rights, as these others' rights are protected by the laws of defamation, public safety, etc.

CONCERNING THE FOURTEENTH AMENDMENT:

A citizens has been deprived of his or her right to due process when a Court acts to overlook the law and circumstances before it, then acts to create law, and wrest other law and procedure to effect a result that is neither privileged or the intent of the legislature (to be explained in the Petitioners' Argument and Appendix), as such conduct strikes against the core of the meaning of "due process", which is that a person should always have a real chance to have their "day in court" present his or her side in a legal dispute and that no law or government procedure should be arbitrary or unfair.

STATEMENT OF CASE

Petitioners are Azariah Michael Ellington and Joy Elaine Ellington, In Pro Per.

Respondents are the Superior Court of California, County of Los Angeles, East District Pomona and the Court of Appeal of the State of California, Second Appellate District, Division Four and the California Supreme Court.

Real parties in interest are Robert Barber Stull, Nationwide Insurance, Douglas Bollinger, John Walker, Richard Delatorre, Charles Crismier III, and Michael Manning, and has an interest that is directly af- fected by this proceeding in that they are Respondents in the action entitled Ellington vs. The Superior Court of Los Angeles County, Civil Action No. B073682 and S043368.

Petitioners are persons beneficially interested in the issuance of a writ of review by virtue of the fact that they are Appellants in the action entitled Ellington vs. The Superior Court of Los Angeles County, Civil

Action No. B073682 and S043368.

On October 17, 1994, the Honorable Presiding and Associate Justices of the Court of Appeal of the State of California, Second Appellate District, Division Four filed a disposition to the Petitioners' Appeal, treating it as a "writ of mandate" and denied, see **Appendix 2a.**

On August 10, 1994, the Petitioners were represent before said Court of Appeal; the Honorable Judge C.S. Vogel, Acting Presiding Judge, then indicated to the Respondents that the Petitioners would not be deprived of their rights to the Respondents. This message was so impressed upon the Petitioners and Respondents so that they all subsequently related it to the Superior Court Judge who was presiding over matters (consolidated case no. KC013366) that arose from facts related to this Petition.

On January 11, 1993, Motion for Leave to File Amended Complaint was heard to add tortious conduct allegations, and other defendants, the Petitioners were deprived of the right to timely pursue action against the Respondents. When the Petitioners appealed the Superior Court's decision, an automatic stay was placed, holding the Petitioners' right to action against the Respondents.

The Superior Court's conduct was such that no person should have to experience the humiliation and distress acted by that Court; moreover, no citizen should have to suffer under the apparent unconcern for the rights and safety of his or her person and/ or property; as the conduct acted against the Petitioners, by the Respondents, was verbally degraded to a mere **nursery rhyme** (court's transcript, in pertinent part, **see appendix 5a**), and likewise discharged, which is a breach of professional conduct, exceed beyond the jurisdiction of the Superior Court, and is unconstitutional.

When deciding this matter, the Court of Appeal

knowingly and further deprived the Petitioners of their rights to the preservation of their action, under the laws pertaining to an automatic stay, when a matter is on appeal, which is unconstitutional and beyond the jurisdiction of the Court of Appeal, and the jurisdiction of the California Supreme Court.

Petitioners contend that the Court of Appeal as phrased the Petitioners' case to make it appear that the entire matter was settled at the Superior Court level, at the Mandatory Settlement Conference (MSC) held October 15, 1993, however, the Court of Appeal was aware of, and referred to documents which demonstrated the agreement upon which the Petitioners and the Respondents would proceed for litigation purposes; and such agreement clearly states that negligence was the only matter settled at the Superior Court level, per MSC transcript.

Petitioners contend that the Court of Appeal has verbally accelerated the Petitioners case to final adjudication in the Superior Court, that the "litigation privilege (**Civ. Code § 47; Appendix p. 27a - 27a3**) might be applicable for the preservation of the Respondents, as the Respondents had made no claim, at any time during this appeal for a litigation privilege. And it causes the Petitioners to wonder why a neutral party would offer this privilege to the Respondents without qualification. Particularly, when facts, laws and evidence (Motion for Leave to Amend Complaint, Declaration, Third Amended Complaint with exhibits to support within Clerk's Transcript, and Petitioners' Opening Brief) was within the Court's possession which clearly demonstrated that the Respondents had acted conduct against the Petitioners which vitiate any privilege; i.e., "course of conduct" and "reckless disregard for the truth", with malice.

Such conduct is an abuse of discretion, beyond the jurisdiction of the lower Courts, and unconstitutional.

Petitioners contend that because the parties had an agreement concerning settlement, it is un- constitutional for the Court of Appeal to apply the "litigation privilege" to deprive the Petitioners of their contract with the Respondents.

Petitioners contend that it is a breach of professional conduct, beyond the jurisdiction of the Court of Appeal and unconstitutional for a judicial body to knowingly bypass proper law and procedure when adjudicating a matter.

Petitioners contend that it is unconstitutional and against public policy to deny the Petitioners access to the courts for fair adjudication of issues, when the Petitioners have timely and properly brought their Motion for Leave to Amend Complaint within the judicial proceedings, according to the laws of the State of California concerning bringing all matters before the Court within the present proceeding.

Petitioners contend that the litigation privilege, Cal. Civ. Code § 47 **(App. 27a)** has been uncon- stitutionally applicated to unfairly alter the Petitioners' appeal, and deprive the Petitioners of their right to due process.

When the Petitioners requested review form the California Supreme Court, the request was simply denied without explanation.

Petitioners allege that they can not get a fair hearing in the lower courts; as the Superior Court, Court of Appeal and the California Supreme Court have demonstrated conduct toward the Petitioners' cause which deprives the Petitioners of a fair hearing,
and their rights to a fair hearing and due process of the law, as provided by the USC Amendment Fourteen.

It appears that the lower courts are more interested in finding a way to shield the Respondents. Coupled with the conduct acted against the Petitioners, on January 11 , 1993 (when Petitioners attempted to amend their complaint to address the

additional tortious conduct acted against them).

On October 13, 1994, the Honorable Theodore Piatt issued Notice of Ruling of Ruling on Demurrer, in consolidated case No. KC 013366.

The Respondents Demurrer to the Petitioners' related action was sustained without leave to amend, based on Cal. Civ. Code § 47 **(See App. P. 27a)**

On page 3; line 16 of the Notice of Ruling, the court indicates to the Respondent that they should file a "demurrer which directs the Court to legal issues and/ or legal defects with the Complaint rather than the two-page motion filed July 12, 1994."

This wording directly demonstrates that the lower court will not fairly adjudicate matters correctly set before it, as on one hand they indicate that the Petitioners' Complaint was to long and rambling; however, the Respondents' demurrer was sustained even though the Respondent provided no points, authorities or facts to support their demurrer. (October 14, 1994 Ruling transcript can be provided).

It is probable that the said related matter will come before this Court for review, as the three lower courts have impressed the Petitioners with the fact that they are not interested in the Petitioners right to due process.

Unless the proceedings before respondent are overturned by order of this Court, Petitioner will sustain immediate and irreparable damage in that the Petitioners' will ultimately and finally be deprived of their rights to due process and a fair hearing of their matter, which is not the standard of this Honorable Court or the Constitution of the United States.

As a result of the Superior Court's, the Court of Appeal's and the California Supreme Court's rulings, the Petitioners will sustain irreparable injury, as this matter will be unconstitutionally and unjustly barred from being heard.

STATEMENT OF FACTS

On January 13, 1992, at approximately 5:10 p.m., Petitioner, Mrs. Ellington was operating her vehicle, southbound on Barranca Avenue, in the City of Covina, California; when she entered the intersection of Puente Street, a vehicle operated by Respondent, Robert Barber Stull attempted a left turn and collided with and into the vehicle operated by Mrs. Ellington.

When this matter was litigated (litigation was initiated March 92'), much evidence (photos of Respondent and Petitioner vehicles; police report including diagram of impact, Respondent's statement, Petitioners' statement, and witness Joseph Mitchell's statement; Nationwide's 50/50 liability letter Feb. 92' all within Clerk's Transcript and two other independent witnesses) was provided to substantiate liability.

However, the Respondents, Stull and Nationwide, and the Respondents, Richard P. Delatorre and John J. Walker, attorneys for Stull, and Douglas L. Bollinger, Claims Attorney for Nationwide Insurance, individually and in concert engineered facts which each knew to be false statements of material facts and issues(in direct contradiction to the evidence they had within their possession as early as Feb.92'), when they indicated that the said accident occurred after darkness, on January 13, 1992 and it was a head - on collision caused by Mrs. Ellington, when she violated the double - yellow dividing line, at the said intersection and forced the vehicle operated Stull backwards approximately two car lengths evidence by Mercury Insurance Group letter of Respondent Stull with re- presenting counsel present Michael Manning on March 23, 1992 (included in Clerk's Transcript page 000053).

The named Respondents chose to maintain that the said known false statements of material facts and issues were ground for defense and disputed liability.

On September 15, 1993 and October 15, 1993 Mandatory Settlement Conference, where negligence was settled and a verbal contract that the Appeal would

be held viable, the Respondents misrepresented the true limits and provisions of Respondent, Stull's insurance policy.

It is the Petitioners, Joy Elaine Ellington and Azariah Michael Ellington allegations that the Respondents have acted against the Petitioners in the form of Fraud, Abuse of Process, Intentional Interference with Business Advantage and Intentional Infliction of Emotional Distress; and, the said Respondents acted the said causes of action individually and in concert, and their efforts may mandate a Petition to Allow Complaint Against Attorneys for Civil Conspiracy with Client.

REASONS FOR GRANTING CERTIORARI

The Petitioners respectfully submit that they have raised the issue of "due process" within the Notice of Motion for Leave to Amend Complaint, (**see Appendix page 8a**), and is part of Clerk's Transcript, at page 1; filed with Opening Brief of Eight Points regarding "Abuse of Discretion", and such right to "due process" was further denied the Petitioners, by the Court of Appeal of the State of California, Second Appellate District, Division Four (depriving Petitioners of rights under U.S.C.A, Constitution, Amendments 1 and 14 and California Constitution, Article 1 § 1, Article 1 § 2 and Article 1 § 7), and such denial was joined and aided by the highest Court in the State of California.

This conduct come within the ambit of ground for granting Petitioners' request for Certiorari, ac- cording to **Supreme Court Rule 10.1(c) (see App. 9a)** as the State of California has not only failed to abide by the Constitution and laws of the State, but further acted against the Constitution and laws of the United States of America as indicated and held by this Honorable Court, as follows:

U.S.C.A., Constitution, Amendment 14;

Due Process, Supreme Court Rule 10.1(c)

Duares v. City of N.Y., C.A.2 (N.Y.) 1993, 985 F3d 94 (private individual subject to liability if willfully collaborated with state official in deprivation of federal right); **Hoai v. CADC** (1991) 935 F.2d 308 (joint activity requires overt and significant state participation); **NAACP v. Hunt** C.A.11 (Ala) (1990) 891 F.2d 1555 (private party conspire with state official right to sue); **Imbler v. Pachtman** 424 U.S. 409, 47 L.Ed 2d 128, at 145; 96 S.Ct. 984 (42 USC § 1983 is fundamentally one for "misuse of power"); **Steele v. Stephan** (1986) 633 F.Supp 950, 952 (complaint dismissed if it appears beyond a doubt no set of facts can support the claim); **U.S. v. Stanley** (1987) 107 S.Ct 3054, 3070-3071, 483 U.S. 669, 693-697 (not unfair to hold liable the official who knows he's acting outside the law); **Harlow v. Fitzgerald** (1982) 457 U.S. 800, at 817; 102 S. Ct. 2727, at 2738 (officials' conduct violate clearly established statutory of constitution rights); all in direct conflict with the Opinion of the Court of Appeals of the State of California (**see appendix page 9a, 10a, 11a, 12a**)

California Constitution, Amendment Art. 1 § 1 Inalienable Rights, and Art. 1 § 7 Due Process; Supreme Court Rule 10.1(c)

H & M Assoc. v. City of El Centro (1980) 167 Cal.Rptr. 392, 109 C.A. 3d 399 (pleading defendant knowingly and willfully conspired); **In Re Marilyn H.** (1993) 19 Cal.Rptr.2d 544; 5 Cal. 4th 295, 857 P.2d 825 (nature of due process); all in direct conflict with the Opinion of the Court of Appeals of the State of California (**see appendix page 12a**)

U.S.C.A. Constitution, Amendment 1

Freedom of Speech

State v. Monastero, 1988, 424 N.W.2d 837, 228 Neb. 818, appeal dismissed 109 S.Ct. 358, 488 U.S. 936, 102 L.Ed.2d 349 (not all speech is protected); **Farina v. U.S.**, D.C. App. 1993, 622 A.2d 50 (regulation of

conduct); **U.S. v. Riggs** N.D. Ill. 1990, 743 F.Supp. 556 (First Amendment does not protect criminal conduct); **Upchurch v. New York Times Co** S.C. 1993, 431 S.E.2d 558 (privilege speech does not automatically protect for action of intentional infliction of emotion distress); **Matter of Anderson** 1990, 795 P.2d 64, 247 Kan. 208, certiorari denied 111 S.Ct. 985, 498 U.S. 1095, 112 L.Ed.2d 1069 (professional misconduct has chilling effect on First Amendment rights); **Coleman v. Caddo Parish School Bd.**, La. App. 2 Cir. 1994, 635 So2d 1238 (speech is protected unless it present clear and present danger) ; **Underwager v. Salter** C.A.7 (Wis) 1994, 22 F.3d 730 ("actual malice" awareness of probable falsity); all in direct conflict with the Opinion of the Court of Appeal of the State of California (**see appendix 12a, 13a, 14a, 26a**)

California Constitution Art.1 § 2
Freedom of Speech

Fisher v. Larsen (1982)188 Cal.Rptr. 216, at 226, 138 C.A.3d 627, at 639 (reckless disregard for the truth); **Kupiec v. American Intern. Adjustment Co.** 235 Cal.App.3d 1329, 1 Cal.Rptr.2d 371 (Cal.Civ.Code §47 (b)(2) does not privilege tortious courses of conduct); **Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma** Inc., et al., 42 Cal.3d 1159, 232 Cal.Rptr.567 (Cal. Civ Code § 47, subd. 2 does not preclude court from making evidentiary use of statements to determine improper "ulterior" purpose); **Kachig v. Boothe** 22 Cal.App3d 626, at 634, 99 Cal.Rptr.393, at 397 (expose perjury); all in direct conflict with the Opinion of the Court of Appeals of the State of California (**see appendix page 14a, 15a**)

California Civil Code of Procedure allowed for redress are as follows:

CCP § 473

"The court may, in furtherance of justice,

and on such terms as may be proper, allow a party to amend any pleading or PROCEEDING...THE court may likewise, in its discretion, after notice to the adverse party, allow, upon such terms as may be just, and amendment to any pleading or proceeding in other particulars...." (included in Motion for Leave to Amend Complaint **see appendix 8a**)

CCP § 30

A civil action is prosecuted by one party against another for the declaration, enforcement of protection of a right, or the redress or prevention of a wrong.(included in Reply to Defendants Opposition to Motion for Leave to Amend Complaint, in Clerk's transcript page 000160)

Petitioners' also pled the following cases in their Motion for Leave to Amend Complaint regarding "refusal to allow amendment would deprive the petitioner of the right citing **Hirsa v. Superior Court (Vickers)** (1981) 118 CA3d. 486, 173 Cal.Rptr. 418 and**Marasco v. Wadsworth** (1978) 21 C3d. 82, 146 Cal.Rptr. 843**(see appendix 8a3 and 26a)**

In the Petitioners Opening Brief cited Eight (8) California Statues and Forty-Eight (48) directing the Court of Appeals to "Due Process**Table of Authorities, see appendix 7a**) also, see **Parchment Co. v. Paterson P. Paper Co.** (1931) 282 U.S. at p. 564, 51 S.Ct. at p. 251, citing **Gilbert v. Kennedy** (1871) 22 Mich. 117, 130 **(see appendix 16a)**.

Finally, in accordance with Rule 10 1(c) **(see appendix 9a)** and Title 28 § 1257 by virtue of the wording, laws set forth herein**(see appendix 17a)** the Petitioners believe that the Honorable Justices of the United States of the Supreme Court will grant the Petitioners Writ to Certiorari based on the governing laws and facts set within this petition.

ARGUMENT

POINT I

PRIVILEGE FOR PUBLICATIONS OR

BROADCASTS MADE IN JUDICIAL PROCEEDINGS APPLIES ONLY TO COMMUNICATIVE ACTS AND DOES NOT PRIVILEGE TORTIOUS COURSES OF CONDUCT

The Petitioners now point out that the "privilege" the Respondents claim a right to will only cover them if in fact they can show that their acts were communicative only, as opposed to a course of conduct. For this, the Plaintiffs have clearly shown that the Defendants were aware that they would use known false statements of material facts and issues as ground for defense and disputed liability as evidenced before the Court of Appeals and the Supreme Court of California within the Clerk' s Transcript.

The Exhibits will show that the Respondents were aware that the insured and Client, Respondent, Stull had indicated on at least three separate occasions, that he attempted a left turn and collided with Petitioner, Joy E. Ellington

The Exhibits will show that the Respondents conspired to deprive the Petitioners of their rights and property, by purposefully and with reckless disregard for the truth, misrepresenting to the Superior Court known false statements of material facts and issues.

This sort of willful misconduct is criminal as well as tortious, and there is no privilege for tortious or criminal conduct, according to California State law, as indicated in **Kimmel v. Goland** (1990) 51 Cal.3d 202, 793 P.2d 524, 271 Cal.Rptr. 191 **(see appendix 17a)**

In the instant case, the Attorneys' conduct will certainly be a conflict of interest that might result in the Attorneys defending against their clients for breach of Penal Codes, Civil Codes and Business and Professional Code. Particularly because each of the Defendants were aware that they would set out to harm

the Plaintiffs and such conduct was reckless and willful, and the following case indicates how such conduct should be considered in relation to Civil Code Section 47**Fisher v. Larsen (1982)** 78 L.Ed2d 335, 464 U.S. 959, 138 C.A.3d 627, 188 Cal.Rptr. 216. **(see appendix 14a and 15a)**

This United States Supreme Court case bars the umbrella of the "absolute privilege" because of the reckless and wanton disregard of veracity, which is evidently and undisputedly set forth or evidence supra.

According to the California Supreme Court, the Respondents' "reckless and wanton" conduct has vitiated any right they may have had to any privilege; as their "course of conduct" and " reckless and wanton" conduct will not be protected by the privilege claimed, or any other privilege for the subject matter.

Further, a key element of the right to a privilege is that the act is "to achieve the objects of litigation", as indicated in **Kupiec v. AmericanIntern. Adjustment Co.** (1992) 235 C.A.3 1326, 1 Cal.Rptr.2d 371. **(see appendix 14a and 15a)**

The communicative aspects of the subject action are not privileged because they were not to achieve the objects of litigation, and they have no connection or logical relation to the action; as the Respondents engineered, conspired and acted the crime of perjury, then entered into the litigation with the intent to use the perjury and misrepresentations to knowingly harm the Petitioners, when they were fully aware that all evidence clearly revealed that they were acting perjury and willful misconduct against the Petitioners, as indicated within the "conclusion" language o**Kimmel v. Goland (1990)** 51 Cal.3d 204, 213; 271 Cal.Rptr. 191, (see **appendix 16a and 17a)**

Upon concluding the Kimmel matter, the Supreme Court of California expressed the abilities, duties and expectation of attorneys; with this, there is

no question that the Attorneys and Clients in the instant matter were fully aware of their harmful and intentional acts prior to, and at the time they initiated and maintained them **(See Kimmel Appendix 17a)**

Both the United States Supreme and the California Supreme Courts will not allow the "judicial proceeding" privilege for conduct which one knows is illegal, tortious and damaging, especially, when such conduct is acted by Attorneys who, by oath, pledge to uphold the law.

Additionally, if the Respondents had a right to the privilege (though they do not), the Petitioners would yet have a right to the use of the statements used in prior judicial proceeding to evidence the tort and crimes,as indicated in **Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karms, Inc. (1986)** 42 C.3d 1157, 232 Cal.Rptr. 567. **(see App.15a)**

In the instant action, the Petitioners have used evidence and statements from within this action to show the tortious and criminal conduct acted by the Respondents.

Particularly, the Petitioners have clearly stated that such incorporated" exhibits evidence the alleged acts, and "course of conduct" acted by the Respondents.

Subsequent to the Petitioner, Mrs. Ellington's, severe spinal surgery, the Petitioners requested by letter dated November 16, 1992, an advance payment to aid them in their demise (Clerk's Transcript p.000066), the Respondent, Insurer informed the Petitioners in letter dated January 1, 1993, that they would then offer them a "nuisance value" of $7,000.00 for their case (Clerk's Transcript p.000071), though the Respondents were aware that the Petitioners' property damage was equal to this amount, and this does not include the medical bills, loss of earning, future loss of earnings, and other losses. This information was before both the California Supreme and Appellate Courts.

The California authority, supra, in relation to the subject matter, as it points to the very conduct com- plained of by the Petitioners, i.e., the unfair settlement practices, the abuse of process, the intentional interference with business advantage, and the intentional infliction of emotional distress.

The "unfair settlement offer" alone is actionable in the State of California under **Insurance Code § 790** which appears at.

The Petitioners believe that this Honorable Court will not close its eyes to the evident fact, that at the very least, the statements and depositions of the three independent witnesses demonstrate a clearly definitive "course of conduct".

RULING OF COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FOUR.

(See Appendix 2a - 2a9)

Probably the most outstanding expression of that acted against the Petitioners, occurred at the Appellate Court level.

The Appellate Court argued that "the trial court's ruling will be disturbed only upon a showing of a " 'clear case of abuse' " [of discretion] and a mis- carriage of justice."(citing **Denham v. Superior Court** (1970) 2 Cal. 3d 557, 566; **California Casualty Gen. Ins. Co. v. Superior Court** (1985) 173 Cal.App.3d 274, 279 *see Opinion of Appellate Court, Appendix 2a6 and 2a7* **See appendix 18a and 19a** for entire citing which evidence a conspiracy of private party and state official.

Within the Petitioners' Brief to the Court of Appeal of the State of California, the Petitioners addressed eight (8) separate Points concerning the trial Court's abuse of discretion and miscarriage of justice. **(Petitioners' Brief to the Court of Appeal appears [in pertinent part] herein at Appendix 10a)**

Each of the Points indicated within the

Petitioners' Brief demonstrate that the Superior Court abused its discretion, particularly when one considers that in order to preserve the conduct of the Superior Court, the Court of Appeal had to ignore the facts of the subject matter, and the California Supreme Court acted as if nothing ever happened; by simply denying the Petitioners of their day in court.

The facts before the California Courts clearly demonstrated that the Respondents had conspired and engineered crimes and torts according to California State law and statutes, i.e. **Business and Professional Code § 6068, Civil Code § 3294, Code of Civil Procedure §§ 20, 30, 32, 379a, 473, 576, Penal Code §§ 9, 118, Insurance Code § 790**, and the *elements of malicious prosecution, intentional interference with business, intentional infliction of emotional distress, abuse of judicial process.* (set forth in Appellate Brief)

The Court of Appeals clearly demonstrates its bias towards the Petitioners (1) by failing to honor California State law which clearly governed concerning acts evidenced by communications, and (2) by acting as both judge and jury when accessing whether or not the Petitioners evidence was absolute, qualified, conditional or evidence which could not be considered privilege to any degree; considering the Clerk's Transcript which was before these California Courts which contained evidence and communications which evidence that the Respondents had conspired to deprive the Petitioners of their right to due process 3) by using it's power and authority to find law and reason for protection of the Respondents, but failed to justly apply law provided to the preservation of the Petitioners' rights. **(see Ap- pendix, Opinion of Appellate Court, at page 2a)**

Such conduct is also governed by **Raya v. Maryatt Industries (1993)** 829 F.Supp. 1169 *plaintiff's error to specify the basis for amendment is not ground to ;deny* **Jacobi v. Blocker, E.D.Va. (1994)** 153 F.R.D. 84 *leave to amend should be freely*

granted; **Dimuccio v. D'Ambra, M.D.Fla. 1991,** 779 F.Supp. 1318, *improper legal theory does not preclude recovery;* **Gallardo v. Board of County Com'rs, Kearny County Kan., D.Kan. 1994,** 857 F.Supp. 783, *statement of claim must give defendant fair notice;* also, **Professional Real Estate Investors v. Columbia Pictures,** (1993) 113 S.Ct. 1920, 1929, *genuine vs. sham pleadings.* **(please see Appendix 19a, 20a and 25a.)**

POINT II
THOSE ALLOWED THE PRIVILEGE MAY CLAIM THE PRIVILEGE FOR THEIR OWN STATEMENTS ONLY

If the Respondents had a right to the subject "privilege" they could not claim the privilege for statement made by others in the same judicial proceedings **(see App. 27a - 27a3)**

In the instant case there are three (3) independent witnesses who have been statementized and deposed concerning the facts and the evidence of this litigation. Each of these witnesses' statements and deposition corroborate the fact that the Respondents were aware that they were using know false statements of material facts and issues as reason for defense and disputed liability.

If the Respondents were allowed the subject privilege, it would not prevent the Petitioners from using the "911" report, the weather data report, the Police Report, the letter from Mr. Delatorre "secreted" to the Appellate Court, the Photographs of the subject vehicles, and the 3 independent witness depositions, just to name a few evidences.

Considering the concept of "abuse of discretion" , the Appellate Court further indicated that "Abuse of discretion will not be found unless the trial court " 'exceeds the bounds of reason, all of the circum- stances before it being considered. ' " ; citing **Denham v. Superior Court, supra**, 2 Cal. 3d at p. 566. **(2a6,7)**

One must wonder at the " court's discretion:" that would overlook that which evidences both crime and tort with all of the facts and evidence plainly before it(**Clerk's Transcript**). As the Superior Court reasoned against the Petitioners with **"nursery rhymes"**, the Court of Appeals used evasion as their vehicle against the Petitioners.

What "court's discretion" allows a crime and tort to be acted against a citizen of their State, when it is clear that others conspired and engineered conduct to deprive a citizen of his and her rights to due process.

What "court's discretion" forsakes the true concept of the law that it might effect some other and absurd result, to the harm of citizens of its State.

The Court of Appeal found law to represent to the Petitioners that an insurer could not be sued with the insured in the State of California, but within the very law cited to represent this defense for the Respondents, the wording is found which indicates that an insurer may be sued for its "own conduct", thus indicating how the California Court tended to represent this condition as final resolution, when in fact an unbiased Court would have indicated that the Petitioners yet retained the right against the Respondent insurer. For this "discretion" the Court of Appeal cited**Royal Globe Ins. Co. v. Superior Court** (1979) 23 Cal.3d 880, 891-892, overruled on other grounds in**Moradi-Shalal v. Fireman's Fund Ins. Companies** (1988) 46 Cal. 3d 287(**see Appendix 2a7**) **Spencer v. State Farm Mut. Auto. Ins. Co.** (1957) 152 Cal.App.2d 797.

The Court of Appeal used this law to surrep- titiously indicate that there was nothing the Petitioners could have against the insurer or the insured, particularly since they attempted to sue them in the same lawsuit, but no California law disallows a person from exercising his right against one who has wronged him, not even in California (when rightly applied) see

Moradi-Shalal v. Fireman's Fund Insurance Companies 46 Cal.3d 287 p.308,Cal.Rptr. 116 p.129 **(appendix page 16a).**

If the Court of Appeal was not bias towards the Petitioners it would have reached for the law concerning the Petitioners, as it sought diligently for law concerning the Respondents, by indicating that though the Petitioners may not be able to sue the insurer and the insured in the same action, they yet have a right to both, under proper procedure, which is also the law in California.

POINT III
MISREPRESENTATION REGARDING THE NATURE OF THE CLAIM COVERED RENDERS SUCH RELEASES VOID

The Court of Appeal indicated that by the authority of **Silberg v. Anderson** (1990) 50 Cal.3d 205, 211-212, 218, that "Even if perjury were a recognized civil cause of action (it is a crime under Penal Code §118), the conduct plaintiffs allege is ab- solutely privileged pursuant to Civil Code § 47 (b)."**(see Appellate Opinion, at Appendix 2a8 and 2a9, then Appendix 18a)** The Petitioners point out that the Silberg case, supra also provides for additional causes of action being brought within the present proceedings, which was done by the Petitioners.

Also, the Silberg case, points out that one may use privilege communications to evidence a tort or crime; the Petitioners are hurt by the fact that the Court of Appeal did not care how the Petitioners were harmed.

The Court of Appeal misrepresented that the Petitioners had "agreed not to allege intentional infliction of emotional distress, and that neither Nationwide nor Walker had anything to do with the collision or any claims arising therefrom." **(App. 2a6)**

Please review the Petitioners stipulation with the Respondents, which appears in Clerk's Transcript,

page 000133 For clarification, at the time of the subject stipulation, the Petitioners had "inadvertently" included Nationwide as a defendant within the original complaint, therefore, the Petitioners agreed to remove Nationwide as a defendant within the original complaint, and change the cause of action"infliction of emotional distress" to "negligent infliction of emotional distress", it is unknown how the Court of Appeal arrived at the language or interpretation inscribed in their ruling concerning this matter, but it certainly demonstrates a true lack of concern for the truth of this matter and the rights of the Petitioners.

At the MSC the nature of the subject release and dismissal, for "negligent" causes of action **only**, was that the Petitioners were relying upon the Court to verify the subject policy limits. When the Court confirmed that the Respondents had verified the policy limits to the Petitioners. The Petitioners accepted the Court's understanding of the policy, and the policy language as represented by Mr. Schaertel (friend of the Court).

After signing the dismissal and release, on October 15, 1993, and prepared by Respondent, the Petitioners discovered that the Respondents misrepresented the insurance policy, and the financial standing of Respondent, Mr. Stull.

The California Appellate Court had provided for such fraudulent situations in **Frusetta v. Hauben** (1990, 2nd Dist) 217 CA3d 551, 266 Cal.Rptr. 6[illegible] **(please see Appendix page 20a)**

The Mandatory Settlement Conference Transcripts, confirm that the Petitioners were relying upon the Courts interpretation of the subject insurance policy. Because the Respondents misrepresented to the Court, the Petitioners believed this misrepresentation and signed the dismissal and release.

Further, the Nationwide policy language made provisions for both bodily injury and loss of consortium

separately, which was denied to the Petitioners.

Please consider the following: **Evidence Code § 356** indicating matter may be elucidated, at **Appendix page 21a**.

Also, **Carson v. Facilities Development Co. (1984)** 36 C.3d 830, 206 Cal.Rptr. 136. **Sprague v. Equifax Inc. (App. 2 Dist. 1985)**166 C.A.3d 1012, 213 Cal.Rptr. 69. **(see Appendix page 21a.)**

POINT IV
WHAT CONSTITUTES PERJURY

> Conviction for perjury requires that accused have specific intent to make false statement under penalty of perjury; statement must be known by accused to be false at time it was made and must be willfully made.

West's Ann. Cal. Penal Code Section 118. - People v. Story (1985 2 Dist)168 C.A.3d 849, 216 Cal. Rptr. 158. **West's Ann. Cal.Penal Code Sections 118, 119, 127. -People v. Truer (1985)** 168 C.A. 3d 437, 214 Cal.Rptr. 869. **18 U.S.C.A. § 1621. - U.S. v. Clark (1990 Cal.)**918 F.2d 843. **West's Ann. Vehicle Code §§ 15, 22406, 40300, 40503. - Brown v. Superior Court (1965)** 234 C.A.2d 628, 44 Cal.Rptr. 519. **(please see Appendix pages 21a and 22a.)**

In the State of California it is a crime to knowingly lie orally, under penalty of perjury or under oath. Also, when a crime is committed, and sufficient evidence shows that a crime has been committed, a warrant for the suspects arrest is issued.

Though the Petitioners had mislabeled one of their causes of action "Perjury", the California Courts deprived the Petitioners of "due process" by recklessly avoiding the allegations set forth within the pleading, as opposed to the title of the pleading; clear direction was before the Court of Appeals and the California Supreme Court which directed in such circumstances, as indicated within the Petitioners' Brief, at page 23,

citing **Gagne v. Bertran** (1954) 43 C.2d 481; 275 P.2d 15 **(see Appendix 25a)** and **Kreutzer v. San Diego County** (1984) 153 CA3d 62; 100 Cal.Rptr. 322. **(see Appendix 26a)**

Had the State Courts considered the allegations within the causes of action, they would have found the pleadings alleged fraud, oppression, malice and d(see **Professional Real Estate Investors at page 24a and 25a of Appendix)**

The Respondents indicate in letter dated February 11, 1992 **(Clerk's Transcript p. 000021)** that "based on my (their) investigation, I (they) feel my (their) offer to you (us) of 50/50 settlement is appropriate." This letter was based on the fact that Nationwide's client, Mr. Stull had indicated to them that he attempted a left - turn and collided with Mrs. Ellington after darkness, on January 13, 1992.

But when the Respondents further discovered that the subject accident did not occur after darkness, they then indicated that Mrs. Ellington caused an accident with Mr. Stull by colliding "head - on" into Mr. Stull's vehicle after darkness, without headlights, forcing his automobile backwards approximately two (2) car lengths, thus indicating that Mrs. Ellington was 100% liable for the subject automobile accident.

This letter further aids to evidence that the Respondents concocted a crime and tort against the Plaintiffs, because, when after it was evident that their client, Mr. Stull was 100% liable for the subject automobile accident, they then used perjury and a tortious course of conduct by knowingly and intentionally forwarding known perjured statements through the judicial process, to knowingly and intentionally harm, afflict, vex, annoy, harass and deprive the Petitioners of their right to due process.

Considering the relatively light issues of the perjury cases, supra, the course of conduct which was acted against the Petitioners is very substantial.

Petitioners have clearly shown that the Respondents knowingly and intentionally conspired to lie, then used that lie to harm the Petitioners' good faith process, to interfere with Petitioners' business relations, to intentional inflict emotional harm upon the Petitioners, and to deprive the Petitioners of their right to due process.

A simple document is all that is necessary to demonstrate that perjury has been committed. The Petitioners have provided numerous documents and the deposition testimony of three (3) independent witnesses, which clearly show that prior to using the judicial process and during the maintenance of the same, the Respondents were aware of the criminal activity they had acted against the Petitioners **(a non-communicative course of conduct)**

What is amazing about all of this is the fact that the Petitioners would be in custody, or on probation at best, if they had committed these acts with even less evidence to support the facts.

The Respondents are not shielded by the subject "privilege" from the punishment and redress due for such a crime and tort, as indicated in the conclusion section of **Kimmel v. Goland, supra (Appendix pages 16a and 17a).**

The Petitioners are aware that the California State law has no precedence within the jurisdiction of the United States Supreme Court; but the Petitioners would respectfully request that this Honorable Court consider the fact that California failed the Petitioners by ruling in conflict of their own laws, as they relate to the subject matter, thus exposing the fact that the Petitioners were deprived of their right to due process under State and National laws indicated within,**Silberg v. Anderson (1990)** 50 Cal.3d. 205, 214; 266 Cal.Rptr.638, 643. **(see Appendix page 18a)**

The California Supreme Court clearly expresses and holds to the fact that a litigant should

address falsity and misrepresentations within the proceeding that "unending roundelay of litigation" might be averted.

On January 11, 1993 (within the subject litigation) the Petitioners attempted to address the obvious misrepresentations and the resulting additional, defendants and torts arising from the conduct of the Respondents, which is provided for by both statute and case law in the State of California. Particularly when such actions are timely brought within the proceedings.

Even if the Petitioners had erred in their presentation, the law yet remains to provide them the right to due process, as indicated within **Section 1983, Woodard v. Mennella, (EDNY 1994)** 861 F.Supp. 192 **Chambers v. Baltimore, etc. R. Co., (Ohio 1907)** 28 S.Ct. 34, 207 US 142, 52 L.Ed. 143. **(please see Appendix page 23a)**

The Petitioners are grateful for the rights provided by the State and the Nation, and until this action was filed in the Superior Court of California, Los Angeles County, the Petitioners had never filed a complaint.

What has horrified the Petitioners is the fact that a Court can have the clear interpretation of a law, and the fact that a matter is clearly protected by that or those laws and rights; but will act to deprive a person(s) of those laws, in direct contrast, and clear misapplication of those laws, with the knowledge of the harm such conduct would cause, even a breach of the constitutional rights of parties before it, expecting justice.

In the instant matter, the Petitioners have clearly shown that they have been operated against with the intent that they would be deprived, and the Petitioners were so deprived of their right to due process by public officials. Even Judges and Clerks of the lower Courts who joined with and furthered the conspiratory conduct of the Respondents, who had

joined to deprive the Petitioners of their right to due process, and such gives rise to a conspiracy claim within the jurisdiction of this Honorable Court, as follows:

> A § 1983 conspiracy claim may arise when a private actor conspires with a state actor to deprive a person of a constitutional right under color of state law. **Dixon v. City of Lawton, Okl., C.A.10 (Okl. 1990)** 898 F.2d. 1443.

Petitioners allege that the lower Courts acted in concert with the Respondents to aid in furthering their conspiracy against the Petitioners, when the lower Courts were aware of the laws which provided relief for the Petitioners, but acted to wresi these laws to further the interest of the Respondents, in direct and reckless disregard for the rights of the Petitioners.

Considering the concept of justice, the injustice, and joining of the lower Courts to further the unconstitutional act of the Respondents, one can clearly discern the bias of the lower Courts, as indicated within **Concrete Pipe & Prod. v. Const. Laborers Pen. Tr. (1993)**113 S.Ct. 2254, 2277.**(Appendix page 23a)**

Considering the amount of case law and statutes to govern the lower Courts conduct and decisions, it is clear to see that justice was not the root of their ruling, but the very laws written and maintained by these Courts were bypassed and wrested that some absurd result would arise to the deprivation of the Petitioners.

This entire issue was birthed out of a Motion for Leave to Amend a Complaint. And for obviously bias reasons the lower Courts acted in direct and wanton disregard for the law set to govern in such matters, particularly worded within **Zinermon v. Burch** 494 U.S. 126; 110 S.Ct. 984. **(see Appendix page 22a)**

In the instant matter, there was no hearing, only "nursery rhymes" quoted by the Superior Court

Judge, indicating "Liar liar pants on fire, you just can't do that." (see appendix page 5a and 5a1.)

The Appellate Court originally indicated, at the hearing that the Petitioners would not be deprived of their rights, but subsequently changed their ruling, quoting the very law which provided the Petitioners a right to redress (Silberg v. Anderson, supra.)

When this Honorable Court review the transcripts and briefs from the lower Courts, it will find law regarding right to amend complaint citing **Herrera v. Superior Court (1984)** 158 Cal. App.3d. 255; 204 Cal.Rptr. 553, 556 **Olson v. Hart, C.A.10 (Kan.) 1992** 965 F2d. 940. **(please see Appendix pages 23a and 24a.)**

And "spite" from the lower Court is very evident when one considers the Remittitur Notice of the Court of Appeal of the State of California, Second Appellate District, Division Four, which appears at page 12a of Appendix herein. Therein the California Court of Appeal awarded cost to the Respondent, though the Court of Appeals is aware that cost are for frivolous appeals, and it would be interesting to have the Court Appeal prove frivolity concerning the Petitioners' appeal according to **Professional Real Estate Investors, Inc., et al. v. Columbia Pictures Industries Inc., et al** (1992) 113 S.Ct. 1920, 1922, 1929, or **Bartkus v. Illinois** 359 U.S. 121, 79 S.Ct. 676. **(please Appendix pages 24a and 25a)**

Considering the fact that the Petitioners brought their amended complaint within the proceeding, and the fact that a stay was in place for the same, the lower Courts acted with bias and reckless disregard to further the Respondents intentions and deprive the Petitioners, and did so deprive the Petitioners, indicated within **In re Marriage of Horowitz** (App. 1 Dist. 1984) 159 C.A.3d 377; 205 Cal.Rptr. 880; **at App. page 24a**.

Petitioners now request stay of the cost of proceedings provided against them from the California

Court of Appeal according t**American Manufacturers Mutual insurance Co. et al vAmerican Broadcasting - Paramount Theatres, Inc.** (1966) 87 S.Ct. 1, 2,3. **(please see Appendix page 24a)**

When the Petitioners appeared before the Mandatory Settlement Judge, the only matter before that Court was the negligence aspect only, and the related parties agreed that the Appeal for additional defendants and causes of action were yet viable, and the only aspect to be settled was the negligence aspect only, as was indicated and understood by all parties, including the Appellate Court (see Appendix Opinion page 2a and 2a6, footnote 1).

CONCLUSION

In that the lower Courts applied the "litigation privilege as ground to bar the Petitioners from their Constitutional Right to Due Process, the Petitioners request that this Honorable Court address the obvious absurd results effected by the intentional and reckless misinterpretation of the litigation privilege.

The litigation privilege obviously allows the unscrupulous litigant to cause considerable harm to others, while the Justice System looks on, indicating that there is nothing that can be done to avert the obvious criminal and tortious activity.

Surely, the intelligencia of our Nation can see that this privilege simply attracts criminal conduct from those who would fear to tread such areas, if proper and distinct wording was set forth to direct the legislative intent to protect the public as a whole.

Considering the millions of dollars spent litigating such matters (millions of dollars represent those who have the ways and means to address these matters nationally, but there is no consideration for those who have suffered great harm and losses within this area, and silenced by the default which results from

"lack of ability to continue."), and the ever increasing misuse of the privilege, the public is now positioned to witness the erosion of our Justice System; because, now, at the very core of Justice is the conduit for evil, and if one might expect only a few to misuse this privilege, then one should consider that there is no need for any law at all, as only a few would consider violations against their fellows.

Also the litigation privilege has been spoken on and interpreted to protect the innocent witness and litigation participant, but there is no language provided for the protection of the innocent victims, as well as the resulting harm to the innocent victims.

Within the State of California, Police Officers will enter the private residence and property of the Citizens of the State, take that Citizen's property, and charge that Citizen with theft.

When the Citizen arrives at the impounding Officer's place of business to provide proof of ownership, the impounding Officer will deny the Citizen the right to show proof of ownership.

According to California State law, a hearing must be had to determine proof of ownership, but the impounding Officer will further deprive the Citizen, by swearing out a false report to obtain a warrant for the Citizen's arrest, that the Citizen will be deprived of the hearing to show proof of ownership.

The Officer is aided in this conduct by District Attorneys, Public Defenders and Judges ***(who would rather the Citizen stand trial with the receipts to his property within his possession).*** These Judicial Officers may be immuned from redress for their conduct, but the Citizen must suffer a life of anguish. **(Los Angeles Superior Court, Norwalk # VA027889)**

ADOLF HITLER would be thrilled with the justice provided in the State of California.

WHEREFORE, Petitioners respectfully request that this Honorable Court instruct the lower courts to abide by the very laws set forth in California and those of the United States.

1. That a writ of certiorari issue under the seal of this Honorable Court commanding respondent to certify fully to this court, at a specified time and place, a transcript of the record and proceedings describe above.

2. That the forgoing cause be heard and fully considered by this Court and that the disposition of the Petition for Writ of Review filed on December 21, 1994, by the Honorable Chief Justice Lucas of the Supreme Court of the State of California; also the disposition of Appeal filed on October 17, 1994, and the Remittitur Notice filed on January 24, 1995, by the Honorable Acting Presiding and Associate Judges of the California Court Appeal, Second Appellate District, Division Four, be annulled and set aside;

3. For recovery of costs incurred in this proceeding; and

4. For such other and further relief as the court may deem proper.

Dated:

/ Respectfully submitted,

Azariah M. Ellington
In Pro Per

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